IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Smt.Lali & Anr. v. SDO, Sojat City & Ors.

S.B.CIVIL WRIT PETITION NO.1699/1991
under Articles 226 and 227 of the Constitution of India.

Date of Order : 13th April, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.C.Maloo, for the petitioners.
Mr. R.K.Purohit for Mr.R.Mehta, for the respondents.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

BY THE COURT :

By this writ petition a challenge is given by the petitioners to the order dated 15.3.1991 passed by Sub Divisional Officer, Sojat, District Pali. By aforesaid order the Sub Divisional Officer, Pali ordered that half of amount of compensation sought to be awarded as a consequence of acquisition of land in question be given to Smt.Bijudi, Tikam and Ghewarchand (respondents No.5, 6 and 7).

The facts giving rise to present petition are as follows:

One Shri Mula s/o Rajaji by a registered gift deed dated 8.6.1960 donated his share of agricultural

holding to Smt.Lali and Shankar (petitioners No.1 and 2). The land which was donated to the petitioners was also shown to be donated to respondent No.5 Smt.Bijudi in a gift deed dated 15.4.1963. Donor Shri Mula s/o Rajaji on knowing about this fact repudiated by an another document executed and registered on 20.3.1964 that the gift deed dated 8.6.1960 was valid and the gift deed dated 15.4.1963 to the extent it relates to khasra No.891 and 903 was obtained fraudulently.

A suit was filed by one Shri Ramchandra s/o Kunji Mali with an allegation that Mula s/o Rajaji sold standing crop in the fields bearing khasra NO.891 and 903 along with other fields to him on 6.9.1993 for a sum of Rs.1500/-, but Shankar (petitioner NO.2), Deva, Dhanna, Mishria, Maghia and Bijudi took away the crop from those fields and, therefore, he sought a decree for damages in a tune of Rs.1500/-. The petitioner No.2 contested the suit and disputed that the fields bearing khasra No.891 and 903 were ever sold to anybody by Mula s/o Rajaji. It was contended by him that the aforesaid land donated by Mulaji to his adopted mother Smt.Lali (petitioner No.1) by a registered gift deed dated 8.6.1960. He also alleged that the suit was a collusive suit between plaintiff and defendants viz. Bijudi and Mula s/o Himta. The civil suit was decided by learned Civil Judge, Pali by judgment dated 17.9.1974. Learned Civil Judge by judgment dated 17.9.1974 held that the land bearing

khasra No.891 and 903 was donated by Mula s/o Rajaji to Smt.Lali by a registered gift deed dated 8.6.1960. After donating the said land to Smt.Lali (petitioner No.1) Mula s/o Rajaji had no right to transfer or gift the same fields to anybody else. The court came to the conclusion that Smt.Lali acquired absolute rights in fields No.891 and 903 situated in chak No.2 near Sojat City. The suit, therefore, was dismissed against the petitioners but was decreed against Smt.Bijudi and others who had received consideration amounting to Rs.1500/- from the plaintiffs.

Being aggrieved by the judgment dated 17.9.1974 plaintiffs Ramchandra and Ghewar preferred a regular appeal before learned District Judge, Pali but the same was dismissed by judgment dated 7.3.1977. A further challenge to the judgment passed by learned District Judge, Pali was given by way of filing a second appeal before this Court and the same was also dismissed being not pressed by order dated 8.12.1988.

The land bearing khasra No.891 and 903 was sought to be acquired by a notification under Section 17(4) read with Section 6 of the Rajasthan Land Acquisition Act published on 20.8.1989. The land was sought to be acquired for a public purpose i.e. that was of construction a Sub Greed Station by Rajasthan State Electricity Board. The petitioners filed their claim for compensation @ Rs.15000/- per bigha before

the Land Acquisition Officer (Sub Divisional Officer), Sojat. The Land Acquisition Officer, Sojat awarded compensation in a tune of Rs.8000/- per bigha i.e. equivalent to Rs.50000/- per hactre with solatium @ 10% and interest @ 4% per annum. A reference to the compensation awarded was made before the learned District Judge, Pali. Learned District Judge by order dated 28.1.1989 reduced the amount of compensation from Rs.8000/- to Rs.2000/- per bigha of land. Being aggrieved by the same the petitioners preferred an appeal before this Court under Section 54 of the Rajasthan Land Acquisition Act, 1954. The appeal preferred by the petitioners was accepted by this Court by judgment dated 5.2.1990 and awarded a compensation @ Rs.8000/- per bigha with solatium @ 30% and interest in accordance with law. The total amount decreed was of Rs.1,33,002.81.

It is also worthwhile to note here that Smt.Bijudi, Tikam and Ghwear (respondents No.5, 6 and 7) also claimed compensation against the land acquired bearing khasra NO.891 and 903. The claim of the respondents No.5 to 7 was rejected by the Land Acquisition Officer, Sojat by an order dated 14.6.1982 on the ground that no document of title was produced by them. An application for reference made by the respondents No.5 to 7 was also dismissed in default on 6.9.1985. No application for restoration of the reference was preferred by the respondents No.5 to 7.

After disposal of the appeal under Section 54 of the Land Acquisition Act by this Court by judgment dated 5.2.1990 the petitioners submitted an application for execution of the decree dated 8.2.1990 amounting to Rs.1,33,002.81. The Rajasthan State Electricity Board sent a cheque of the said amount in favour of the petitioners to Sub Divisional Officer, Sojat. However, the Sub Divisional Officer, Sojat by order impugned dated 15.3.1991 ordered that half of compensation be given to the respondents No.5 to 7. Hence this writ petition is preferred by the petitioners.

The contention of counsel for the petitioners is that the respondents No.5 to 7 are having no interest and right in the land bearing khasra No.891 and 903 which was donated to them by a registered gift deed by Shri Mula s/o Rajaji, therefore, no compensation could have been ordered to be paid to the respondents No.5 to 7. It is also contended by the counsel for the petitioners that the Sub Divisional Officer was having no jurisdiction in execution proceedings to order for making payment of half of compensation to the respondents No.5 to 7.

No reply to the writ petition has been filed on behalf of the respondents.

As stated above, the land in question was donated to the petitioners by Mula s/o Rajaji by a registered gift deed. The respondent No.5 claimed title over the land in question by an another gift deed dated 15.4.1963. However, the aforesaid gift deed was repudiated by Shri Mula s/o Rajaji. Further in a civil suit filed at the instance of Shri Ramchandra it was specifically held that the title of the land bearing khasra No.891 and 903 vests with Smt.Lali and Shankar (present petitioners). The judgment and decree passed by the trial court was affirmed by the first appellate court and the second appeal preferred was dismissed being not pressed. In view of it the finding given by the trial court to the effect that the land donated by Mula s/o Rajaji to the petitioners remained intact and acquired finality. It is further relevant to note that the claim of compensation wit regard to same land made by the respondents No.5 to 7 was also dismissed by the Land Acquisition Officer on the ground of want of title. In view of it there was no just and valid reason for the Sub Divisional Officer, Sojat to allow half of compensation to the respondents No.5 to 7.

From perusal of entire record and the facts stated in the writ petition it is quite clear that the respondents No.5 to 7 are having no claim over the land bearing khasra No.891 and 903 which was donated to the petitioners by Shri Mula s/o Rajaji. The Sub

Divisional Officer, Sojat erred while making an order to make payment of half of compensation to the respondents No.5 to 7.

The order impugned, therefore, deserves to be quashed and the writ petition requires to be accepted. The same, therefore, is hereby allowed. The order impugned dated 15.3.1991 passed by the Sub Divisional Officer, Sojat is hereby quashed and set aside. The petitioners are entitled for the entire compensation awarded against acquisition of the land in question. Same be paid to them with interest.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.